

141 FERC ¶ 61,061
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 24, 2012

In Reply Refer To:
Rockies Express Pipeline LLC
Docket No. RP13-134-000

Rockies Express Pipeline LLC
370 Van Gordon Street
Lakewood, CO 80228

Attention: Robert F. Harrington
Vice President, Regulatory Affairs

Reference: Temporary Waiver Request

Ladies and Gentlemen:

1. On October 4, 2012, Rockies Express Pipeline LLC (REX) filed a request for a temporary waiver of three provisions of its General Terms and Conditions (GT&C), as well as the Commission's capacity release regulations at 18 C.F.R. § 284.8, to permit it to enter into pre-arranged permanent release arrangements of certain capacity. REX requests that the waiver be granted on or before October 15, 2012, in order to allow the parties to effectuate the capacity release transactions to be effective on November 1, 2012. For good cause shown, the Commission grants the requested temporary waiver, effective upon issuance of this order, and effective for 90 days thereafter.

2. REX states that the Commission granted authorization for REX to construct and operate additional compression facilities to transport on a firm basis an additional 200,000 Dth/day in Zone 1 of its system (Expansion Project). REX states that Wyoming Interstate Company, L.L.C. (WIC) entered into a Firm Transportation Service Agreement (TSA) for this 200,000 Dth/day at a fixed negotiated rate for a primary term of 10 years (Contract No. 553362).¹ REX

¹ By letter order dated November 30, 2009 in Docket No. RP10-133-000, the Commission accepted this TSA, effective December 9, 2009.

states that WIC is in negotiations to permanently release a portion of the capacity as follows: 120,000 Dth/day to Occidental Energy Marketing (Occidental); 40,000 Dth/day to Marathon Oil Company (Marathon); and 40,000 Dth/day remaining with WIC. REX states that it can only accept assignment of these transactions in accordance with Section 15, Capacity Release, of the GT&C of its tariff, subject to the Commission granting the requested waivers.²

3. REX states that the reason for the requested waiver is to allow WIC to permanently release portions of its TSA on REX to two prearranged shippers, Occidental and Marathon. Specifically, REX requests that the Commission waive the following sections of its Tariff: GT&C Section 15.5D(3)(i), which states “[t]he maximum rates that may be bid and charged for a Released Firm Transportation Agreement that is for a term greater than one (1) year are the maximum lawful rates applicable to the Eligible Firm Transportation Agreement held by the Original Shipper;” GT&C Section 15.6, which states “[a]n open season is not required for: (a) a Prearranged Release for more than (1) year at the maximum reservation rate applicable to the Capacity being released....;” and GT&C Section 33.5, which states “[t]he maximum price cap for the release of Capacity under a Negotiated Rate Agreement shall be the Recourse Rate.” Additionally, REX is requesting waiver of the Commission’s regulations in section 284.8(b)(2), which states that the rate charged a replacement shipper for a release of capacity for a period of longer than one year cannot exceed the applicable maximum rate, and section 284.8(h)(1), which provides specific exemptions to the bidding requirements.

4. REX asserts that granting the waiver will allow the permanent release, and thereby allow the transfer of capacity from one shipper, who purchased the capacity as part of REX Expansion Project, to Occidental and Marathon. REX states that all parties are aware that the negotiated rate the prearranged replacement shippers agree to pay may potentially exceed REX’s maximum tariff rate for this service. REX states that upon execution of the replacement negotiated rate agreements with Occidental and Marathon, WIC will be permanently relieved of liability under the TSA for the released capacity. REX states that the negotiated rate under the subject contracts will equal the maximum

² WIC also holds firm capacity on Questar Overthrust Pipeline Company (Overthrust), which provides for seamless transportation service from points of receipt to points of delivery on Overthrust or REX. On August 31, 2012, in Docket No. RP12-1018-000, WIC filed a request for waiver of two provisions of its tariff, as proposed therein. On September 27, 2012, in Docket Nos. RP12-1018-000 and RP12-1101-000, Overthrust filed with the Commission a similar request for waiver, as proposed therein, of various provisions of its FERC Gas Tariff and the Commission’s regulations.

tariff rate otherwise applicable to the transportation capacity, therefore, REX is economically indifferent to the permanent releases, and as such, no higher value to the capacity could be gained in a capacity release bidding process.

5. Public notice of the filing was issued on October 9, 2012. Interventions and protests were due on or before October 12, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

6. The Commission finds that REX's request for waiver is adequately supported and may be granted, consistent with previous waivers that the Commission has granted to permit permanent release of capacity under similar circumstances.³ The Commission only requires a pipeline to allow a permanent capacity release where the pipeline will be financially indifferent to the release.⁴ Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it. Accordingly, the Commission will grant temporary, limited waiver of its capacity release regulations, other policies identified above, and REX's tariff provisions to allow the permanent release of the capacity. Specifically, the Commission grants limited, temporary waiver of 18 C.F.R. § 284.8 of its regulations, which govern the release of firm capacity and the posting and bidding requirements for capacity release transactions; and the prohibition on the release of capacity at a rate above the maximum recourse rate. In addition, the Commission grants limited, temporary waiver of GT&C sections 15.5D(3)(i), 15.6 and 33.5 of REX's tariff that implement the above policies, in order to allow for the permanent release of capacity by WIC to Occidental and Marathon. The

³ *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,331 (2005); *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006); *Northern Natural Gas Co.*, 125 FERC ¶ 61,149 (2008); and *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086 (2009).

⁴ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992); and *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092 (1998).

waivers shall remain in effect up to 90 days past the effective date of the Commission's order to allow the parties to complete all necessary contractual obligations.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.